

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOSEPH C. MCGHEE,)
)
)
Plaintiff,)
)
v.) 1:22CV61
)
)
UNITED STATES OF AMERICA,)
et al.,)
)
Defendants.)

ORDER

This matter is before this court for review of the Order and Recommendation filed on January 31, 2022, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that this action be filed and dismissed without prejudice to Plaintiff filing a new complaint, on the proper forms, which corrects the defects cited in the Recommendation. The Recommendation was served on the parties to this action on January 31, 2022. (Doc. 3.) Plaintiff filed timely objections, (Doc. 4), to the

Recommendation.¹ This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b) (1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." *Id.*

This court has appropriately reviewed the portions of the Recommendation to which the objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 2), is **ADOPTED**. **IT IS FURTHER ORDERED** that this action is dismissed without prejudice to Plaintiff filing a

¹ Plaintiff also filed a notice of appeal from the Recommendation to the United States Supreme Court. (Doc. 5.) Plaintiff's premature notice of appeal, to the wrong appellate court, does not divest this court of jurisdiction to enter this Order and corresponding Judgment. See, e.g., 16A Wright & Miller, Federal Practice & Procedure § 3949.1 (5th ed.) (explaining, inter alia, that "[t]he weight of authority holds that an appeal from a clearly non-appealable order fails to oust district court authority," as does "[a]n appeal that is premature because the district court has yet to resolve all claims with respect to all parties in the case").

new complaint, on the proper forms, which corrects the defects cited in the Order and Recommendation.

A Judgment dismissing this action will be filed contemporaneously with this order.

This the 18th day of April, 2022.

William L. Osten, Jr.
United States District Judge